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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/648,584	08/25/2003	Lyn Lequam Ashton	TUC920030066US1	4087
45216	7590	06/13/2007		
Kunzler & McKenzie 8 EAST BROADWAY SUITE 600 SALT LAKE CITY, UT 84111			EXAMINER RUTZ, JARED IAN	
			ART UNIT 2187	PAPER NUMBER
			MAIL DATE 06/13/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/648,584	Applicant(s) ASHTON ET AL.	
	Examiner Jared I. Rutz	Art Unit 2187	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 24 May 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: 1,4-7,9-12,15-18,20,and 21.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
 13. ☐ Other: _____.

Claims 1, 4-7, 9-12, 15-18, 20, and 21 stand rejected under 35 USC 112 first paragraph as failing to comply with the written description requirement as set forth in the Final Rejection mailed 3/28/2007

Applicant's arguments submitted 5/24/2007 have been carefully and fully considered, but are not found persuasive.

Applicant argues, see the second paragraph beginning on page 8, that "the limitation '...such that no additional data may stored to the tape storage medium...' is inherent from the specification as the specification makes it clear that no additional data may be stored on a 'full' tape." Applicant cites page 16 paragraph 64 as teaching this limitation. The Examiner respectfully disagrees.

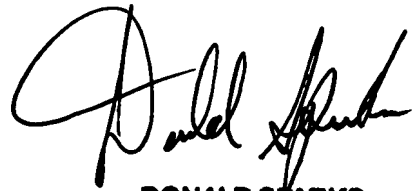
Paragraph 0064 states "If the user defined capacity has not been reached, the application on the host 106, for example, may continue to receive 806 and write 808 source data until the user defined capacity is reached 810. Once the user-defined capacity of the tape storage medium 116 is reached, the application on the host 106 considers and marks 812 the tape storage medium 'full.' The tape storage media 116 is then demounted 814 and the application determines 805 if there is more data to be written. After all of the data has been written, the tape is demounted 814, if mounted, and the method 800 ends."

Accordingly, from the cited paragraph and corresponding figure 8, it would appear that the system disclosed continues to write data to the tape if there is more data to be written. Note step 807, which recites mounting the tape after it has been marked full. Accordingly, it is not inherent that a tape is marked full such that no additional data may be stored to the tape storage medium.

Further, if paragraph 0046 and figure 8 are interpreted to mount a different tape in step 807 than the tape marked full, even though that is not expressly disclosed by the specification, the limitation "such that no additional data may be stored to the tape storage medium" is not inherent from the specification. There is no teaching in the specification that after a tape is marked "full" it cannot be remounted and additional data written thereto.

As an example, a half full glass of water may be marked "full," but there is nothing preventing the addition of more water to fully fill the glass. Claims 1, 9, and 12 require that once a tape is marked "full," "no additional data may be stored to the tape storage medium." This limitation, as discussed supra and in the Final Rejection mailed 3/28/2007, is not taught by the specification, and is not inherent in the disclosure of the specification as argued by Applicant. Accordingly, the rejection of claims 1, 4-7, 9-12, 15-18, 20, and 21 is maintained.

Dr. t



DONALD SPARKS
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